

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 321.4, the Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 157, "Devices and Methods to Test Body Fluids for Alcohol or Drugs," Iowa Administrative Code.

Iowa Code chapter 321J requires that various devices used to measure concentrations of alcohol or other drugs, including evidentiary breath testing devices, be approved for use by the Commissioner of Public Safety. The technology available for evidentiary testing of breath for the presence and concentration of alcohol is an evolving area. From time to time, technological improvements require approval of new devices or new models of devices previously approved for use in Iowa. The amendment proposed herein would provide that approvals of new devices as well as withdrawals of prior approvals would be announced through the publication of revised lists of approved evidentiary breath testing devices when the list of approvals changes. The current list would be available upon request to the Division of Criminal Investigation Criminalistics Laboratory and would also be available on the Web site of the Department of Public Safety.

A public hearing on this proposed amendment will be held on September 9, 2008, at 8:15 a.m. in the First Floor Conference Room (Room 125), State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319. The building and conference room are fully accessible. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319, by mail; by telephone at (515)725-6185; or by electronic mail to admrule@dps.state.ia.us at least one day prior to the public hearing.

Any written comments or information regarding the proposed amendment may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated by 4:30 p.m. on September 9, 2008, or may be submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the Agency Rules Administrator by telephone or in person at the Department office at least one day prior to the public hearing.

This amendment is intended to implement Iowa Code chapter 321J.

The following amendment is proposed.

Amend rule 661—157.2(321J) as follows:

661—157.2(321J) ~~Breath~~ Evidentiary breath testing.

157.2(1) A peace officer desiring to perform testing of a subject's breath for the purpose of determining the alcohol concentration shall employ, or cause to be used, a breath testing device of a type meeting the minimum performance requirements established in Highway Safety Programs; Model Specifications for Devices to Measure Breath Alcohol, Federal Register, Volume 58, No. 179 (September 17, 1993), pp. 48705-48708. All devices so used must be certified to be in proper working order within a period of one year immediately preceding use according to procedures specified for that device.

157.2(2) The division of criminal investigation criminalistics laboratory shall maintain a list of devices approved by the commissioner of public safety for collection of breath samples for evidentiary purposes. The current list shall be available upon request to the division of criminal investigation

~~criminalistics laboratory Procedures for certification or recertification of the Datamaster edm are contained in the document Certification or Recertification of the Datamaster edm, published by the division of criminal investigation criminalistics laboratory. A copy of the current version of this document may be obtained by contacting the division of criminal investigation criminalistics laboratory at 2240 South Ankeny Boulevard, Ankeny, Iowa 50023, or at~~ on the Web site of the department of public safety.

NOTE: The current address for information on ~~the Datamaster edm approved evidentiary breath testing equipment~~ from the criminalistics laboratory is: <http://www.dps.state.ia.us/DCI/Crime Lab/Evidential Breath Testing/index.shtml>.

157.2(3) The operator of an evidentiary breath testing device shall have been certified as competent in the operation of the breath testing device, and shall proceed in accordance with the instructions included in an operating manual furnished by the division of criminal investigation criminalistics laboratory. An operating manual, with number and date, specific to a particular approved device and prepared by the division of criminal investigation criminalistics laboratory shall be available to operators using the device. The current version of the operating manual for each device currently approved for use in Iowa may be obtained by contacting the division of criminal investigation criminalistics laboratory at 2240 South Ankeny Boulevard, Ankeny, Iowa 50023, or from the department's Web site.

NOTE: ~~The operating manual for the Datamaster edm is titled "Operating the Datamaster edm."~~ The current location of ~~information regarding the Datamaster edm operating manuals for approved evidentiary breath testing devices~~ on the department's Web site is: <http://www.dps.state.ia.us/DCI/Crime Lab/Evidential Breath Testing/index.shtml>.

157.2(4) All certifications of evidentiary breath testing devices shall be made by the division of criminal investigation criminalistics laboratory. All certifications of operators shall be made by the division of criminal investigation criminalistics laboratory or a designee. A designee shall be a person trained and certified by the division of criminal investigation criminalistics laboratory.

~~157.2(2)~~ **157.2(5)** A breath testing device is a device designed and constructed to measure a subject's breath alcohol concentration by utilizing a sample of the subject's breath.

~~157.2(3)~~ ~~Although any breath testing device that meets the minimum performance requirements established by the National Highway Traffic Safety Administration, and cited in subrule 157.2(1), is authorized by the commissioner to be employed or to be caused to be used to determine the alcohol concentration, the following evidentiary device is being used in Iowa and meets the standards:~~

~~a. — Datamaster edm, National Patents Analytical Systems, Inc.~~

~~b. — Reserved.~~